Motorola, Inc. *and* United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO. Case 13–CA–7269.

March 14, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On September 30, 1966, Trial Examiner Stanley N. Ohlbaum issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative actions, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain alleged unfair labor practices and dismissed these allegations of the complaint. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner with the modification noted below.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and hereby orders that Motorola, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.

1. Paragraph 1(a) is amended to read:

"(a) Interrogating in violation of the Act any employee as to his union membership or lawful organizational or other activity, or threatening employees with the loss of a profit-sharing plan if they choose a labor organization to represent them as their collective-bargaining agent."

2. Add the following indented paragraph after the second indented paragraph of the Appendix to the Trial Examiner's Decision:

> WE WILL NOT threaten our employees with the loss of the profit-sharing plan if they choose a labor organization to represent them as their collective-bargaining agent.

[1] In agreeing with the Trial Examiner that Respondent through its supervisor, Ronald Caccamo, engaged in unlawful interrogation of employees Gerhard Kutzora and James Bastian, we find it unnecessary to pass upon the Trial Examiner's comments, expressed in footnote 8 of his Decision, as to Caccamo's failure to justify the questioning or assure against reprisal, and the speculation as to subjective effect on the employees of the coercive interrogation.

We also agree with the Trial Examiner that Respondent's proscription of, or effort to proscribe, communication between employees on union and organizational matters, was violative of Section 8(a)(1) of the Act. In making this finding we rely on the broad and all encompassing nature of the proscription as to time and place, and find it unnecessary to decide whether the proscription was disparately applied.

[2] The General Counsel excepted to the failure of the Trial Examiner to find as a violation of Section 8(a)(1) of the Act Caccamo's statement to employees Kutzora and Bastian about the probability of the loss of profit sharing if the Union was successful. We find merit in this exception Unlike the Trial Examiner we do not view this as a chance remark or statement of opinion We note, particularly, that it was made in conjunction with other illegal interrogation of the employees and under the circumstances is readily identifiable as a threat rather than a statement of opinion Nor does the fact that the threat was made by a relatively minor supervisor to only several employees vitiate its illegal nature and exonerate the Respondent from responsibility. Accordingly, we shall amend the Trial Examiner's findings, Recommended Order, and Notice

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

STANLEY N. OHLBAUM, Trial Examiner: This case was heard before me in Chicago, Illinois, on May 4–6, 1966, on complaint of General Counsel of the Board[1] alleging, and answer of Respondent denying, violation of Section 8(a)(3), (1), and (4) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.* (Act). All parties appeared and were represented throughout by counsel, who were afforded full opportunity to present evidence and contentions, file briefs, and propose findings of fact and conclusions of law. Subsequent to the hearing, a brief was received on behalf of General Counsel, which, together with the entire record, has been carefully considered.

Upon the entire record[2] and my observation of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION; RESPONDENT'S BUSINESS; LABOR ORGANIZATION INVOLVED

At all material times, Respondent, Motorola, Inc. (Employer), has been and is an Illinois corporation with its principal office in Franklin Park, Illinois, engaged, in Chicago, Illinois, and elsewhere, in manufacture of radio, television, and electronic equipment and related products.

[1] Issued through the Director of Region 13 on March 11, 1966, upon charge filed by the above Union on December 9, 1965, amended on January 19 and further amended on February 1, 1966 The complaint was amended on May 5, 1966 (at the hearing), so as to allege violation of Section 8(a)(4)

[2] Hearing transcript corrected in accordance with order on my notice dated August 2, 1966

During the 12-month representative period immediately preceding issuance of the complaint, Respondent in the course and conduct of its said business operations manufactured at and shipped from its Chicago plants, directly in interstate commerce to States other than Illinois, goods and materials worth over $1 million. I find that at all material times Respondent has been and is an employer engaged in commerce, with its operations affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

I find that at all material times United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO (Union), Charging Party herein, has been and is a labor organization within the meaning of Section 2(5) of the Act.

I find that assertion of jurisdiction in this case is proper.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues*

The issues presented are whether Respondent violated Section 8(a)(1) through interrogation, surveillance, interdiction of communication among union employees during working hours, and coercive wage increases to discourage union and protected concerted activities; Section 8(a)(3) through discriminatory demotion of an employee and depriving him of the opportunity for overtime; and Section 8(a)(4) by denial of employment to employees for testifying at this hearing.

B. *Background*

Respondent is a well-known manufacturer of radio, television, electronic, and related products and equipment, with factories including several in the Chicago, Illinois, area. The only one here involved is its plant at 4545 West Augusta Boulevard, Chicago (Augusta Boulevard).

According to the testimony of Union International Representative Chiakulas, he "started organizing" technical employees (i.e., phasers, analyzers, and testers) at Augusta Boulevard (Communications Division) "about the middle of July, 1965."[3] These organizational activities on his part apparently consisted merely of "initial meetings with one or two individuals in July and during the month of August,"[4] in August giving employee Stach some 50 union authorization cards for distribution,[5] "[holding] a series of meetings early in September," and mailing union organizational literature to Augusta Boulevard technicians in three mailings in September. Union clerical employee Pucinski's credited testimony (corroborated in essence by that of Chiakulas) establishes that the latter two of these mailings occurred on September 8 and 16, and the first mailing probably on September 4. On September 16, the Union wrote Augusta Boulevard Plant Manager Law that it was engaged in an organizing campaign at Augusta Boulevard. This communication was received by Law on September 17 after lunch.

C. *Alleged Violations of Section 8(a)(1)*

1. Interrogation

The complaint alleges and Respondent denies that on or about September 15, Respondent through its Supervisor Caccamo interrogated an employee about his union activity.

On or about September 15 or 16, Augusta Boulevard analyzer Kutzora received a union card from fellow analyzer Pottebaum. Later,[6] according to Kutzora, his immediate Supervisor Caccamo asked him at his workplace whether he had received a union card. When Kutzora replied in the affirmative, Caccamo asked him where he had obtained it. Kutzora told Caccamo he didn't care to tell him. Caccamo, however, "kept insisting" that Kutzora tell him, stating it was "all right" to do so and that Kutzora "wouldn't have to worry about anything." Finally, Kutzora told Caccamo that he had received the card from fellow employee Pottebaum. Caccamo flatly denied this or any other conversation at any time with Kutzora on the subject of a union card. There is thus presented a square issue of credibility between Kutzora and Caccamo. Kutzora impressed me as an essentially truthful witness who testified in a straightforward manner. The testimony of Caccamo, however—as will be detailed below in another connection—was characterized among other things by substantial hedging and equivocation. Although even strictly on credibility comparison I would prefer and credit the described testimony of Kutzora, the choice is facilitated through the testimony of analyzer Bastian, who testified that he overheard the foregoing conversation between Caccamo and Kutzora. Bastian's version essentially corroborates that of Kutzora.[7] Further, according to Bastian, Caccamo then questioned him (Bastian) as to whether he had received and signed a union card. Bastain said no, although he had in fact signed the card. Caccamo also flatly denied ever talking to Bastian on this subject. Bastian impressed me as an honest witness whose testimony is worthy of credit.

Under the circumstances, crediting the described testimony of Kutzora and Bastian in preference to that of Caccamo, I find that on or about September 15, 1965, Respondent through its Supervisor Ronald Caccamo at its Augusta Boulevard plant interrogated its employees

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[3] Other categories of personnel there are other professional employees and production and maintenance employees

[4] Throughout, unspecified years are 1965

[5] Although Chiakulas testified he gave Stach the union cards early in August, Stach testified that—after a preliminary meeting at Stach's home in the first week of August with President McGraham of a neighboring plant local union, at which Stach agreed to attempt to organize Augusta Boulevard—he (Stach) and several fellow employees (including Pottebaum and Laflie) met Chiakulas "possibly the 2nd or 3rd week in August" and received some 50 union authorization cards from him With regard to his own union authorization card dated August 7, Stach was unable to recall whether he signed this when he was visited by McGraham or when he first saw Chiakulas Stach's credited testimony establishes that in mid-August he commenced distributing the union authorization cards among plant employees

[6] Kutzora testified that this was on the same day, on overtime Although Respondent's timecards throw doubt on the accuracy of the overtime date given by Kutzora (and fellow employee Bastian), the precise date (and whether or not it occurred on overtime) of the event to be described does not appear to be of controlling significance Even so, I have taken this circumstance into account in evaluating the comparative credibility of Kutzora and Bastian *vis-a-vis* Caccamo

[7] According to Bastian's recollection, Kutzora, among other things, while admitting receipt of the union card, denied *signing* it, and Caccamo told Kutzora, "Of course, you will realize you will lose profit sharing if the Union gets in here?"

Gerhard Kutzora and James Bastian concerning their union membership and activities.[8] [9]

2. Surveillance and interdiction of communications among union employees

The complaint also alleges and Respondent denies that since September 1 Respondent, through various supervisors, has "kept under close surveillance employees who engaged in union activities by preventing said employees from communicating with other employees during working hours." The allegation as thus pleaded will be treated as an allegation of (1) surveillance and of (2) interdiction of communications among employees engaged in protected concerted activities.

The evidence[10] indicates that various supervisory employees of Respondent have kept a relatively close watch on certain Augusta Boulevard technician employees, notably those active in union matters, particularly after the inception of union organizational activity. Since it is not unlawful for an employer to keep employees under observation to determine whether or how they are doing their jobs—nor, indeed, even through observation to ascertain the extent of their worktime union activities[11]—it is unnecessary to detail the evidence as to the nature and extent of those observations, which appear to have been unremarkable and not unreasonable.

Respondent's supervisor, Caccamo, however, went further. Based presumably upon such observations, he appears in effect to have issued an unduly broad interdiction of conversation among employees with regard to union matters.

Credited testimony of employee Stach establishes that he has been accused by his supervisor, Caccamo, as shown below, of "poisoning [employees'] minds with the union," and queried by another supervisor, Kucharski, as to when he would "stop [your] union activity at Motorola, stop talking to the other workers about a Union"; and that when Stach pointed out that it was his privilege to do this on his own time, Kucharski remarked, "[You] speak like [you are] from Russia."[12] As shown below, when Stach, leader of the union organizational activity at Augusta Boulevard, was transferred on August 23 to a less desirable position and asked Supervisor Caccamo why, "Caccamo stated that I [Stach] had been talking to the other employees about a union, and that he was demoting me [from analyzer to] . . . tester as a result." Supervisors Caccamo and Kucharski have accused Stach of creating job dissatisfaction at the plant and have urged him to stop his union organizational activities.

Caccamo testified that "during working hours . . . right close to August 23, on the day he [Stach] was moved . . . I told him then to refrain from talking to employees during working hours, and I might have used the words, 'Refrain from talking to employees during working hours and poisoning minds toward Motorola.' And if he did not want to work in Motorola to go out and find one of these better jobs that he spoke of."

Although Caccamo and Kucharski were interdicting or attempting to interdict all union talk by employees at the plant, they were themselves engaged in what appears to have been extensive antiunion discussions with employees on company time. For example, in mid-September Caccamo engaged in an antiunion discussion with analyzer Pottebaum—overheard by analyzers Kutzora and Bastian—for about an hour and a half on paid overtime, in the course of which Caccamo showed Pottebaum (and Kutzora) an antiunion school theme written by another employee, which Respondent or one of its supervisors had apparently reproduced.

Based upon evaluation of comparative testimonial demeanor, I credit the described aspects of the testimony of General Counsel's witnesses Stach, Pottebaum, Kutzora, and Bastian. Thus, Caccamo's (as well as Kucharski's later) proscription of conversation on union matters was not only too broad but was disparate. No necessity was shown for flatly proscribing union talk by known union leader Stach,[13] at least in nonworking areas on nonworking time (nor even in working areas on nonworking time) to maintain production or discipline;[14] and the continuing antiunion discussions and communications of Respondent's supervisors, Caccamo and Kucharski, with employees on company time and overtime indicate not only an absence of such necessity but also that the Company did not regard itself as being under similar restraint, thereby not only reflecting on the

[8] It is to be noted that Caccamo gave no reason in attempted justification for the described interrogation, nor for his insistence that Kutzora disclose to him the source of the union card, nor did Caccamo provide any reassurance to Bastian against reprisal, nor meaningfully reliable reassurance to Kutzora of no reprisal against him or the source of the card That the coercive effect of Caccamo's questioning may be gauged by the fact that Bastian replied untruthfully to it, see *Bourne* v *N L R.B* , 332 F 2d 47, 48 (C A 2), cited with approval in *N L R B* v *Camco, Inc* , 340 F 2d 803, 804 (C A 5), cert. denied 382 U S 926, *Cannon Electric Company*, 151 NLRB 1465, 1470

[9] On brief for the first time, General Counsel states that also in issue herein is whether Caccamo told employees they "would lose their profit-sharing plan" if the Union got in Although this is nowhere alleged in the complaint, at the hearing employees Kutzora and Bastian testified that in mid-September Caccamo told them "that if the Union were to get in, profit sharing would probably be lost to the employees If not lost, it would be cut down to the contribution of the company They had control of it, and they could cut it down to practically nothing " It would not appear that this possibly chance remark or statement of opinion on one occasion should, under the circumstances and considering the size of Respondent's plant and the number of employees involved, be considered to be a threat or an otherwise economically coercive declaration for which Respondent may fairly be held answerable

[10] Testimony of General Counsel's witnesses Stach and Pottebaum, and of Respondent's witnesses Diggs, Caccamo, Hinton, and Kucharski

[11] There is here no allegation, nor basis for finding, that Respondent created the impression that its employees' protected organizational activities were under surveillance Cf , e g , *N L.R B* v. *Rish Equipment Company*, 359 F 2d 391 (C A 4).

[12] Although Kucharski denied such a conversation or that union was at any time even mentioned between Stach and him, on comparative demeanor observations I believe Stach's testimony to be more worthy of credit

[13] Cf. *N L R B* v *Charles Miller & Co* , 341 F.2d 870, 873–874 (C A 2), *N.L.R B.* v *United Aircraft Corp* , 324 F 2d 128 (C A 2), cert denied 376 U S 951, *Whitfield Pickle Company*, 151 NLRB 430, *Atkins Saw Division, Borg-Warner Corporation*, 148 NLRB 949, *Hunt Electronics Company*, 146 NLRB 1328, *Bannon Mills, Inc.*, 146 NLRB 611, *Texas Aluminum Co , Inc.*, 131 NLRB 443, enfd 300 F 2d 315 (C A 5), *Star-Brite Industries, Inc.*, 127 NLRB 1008, *Walton Manufacturing Company*, 126 NLRB 697, enfd 289 F 2d 177 (C A 5)

[14] Cf. *Republic Aviation Corporation* v *N L R B* , 324 U S 793, 803, fn 10, 804–805, *N L R.B.* v. *Charles Miller & Co* , *supra*, fn 13, *N L.R B.* v *United Aircraft Corp* , *supra*, fn. 13; *Stoddard-Quirk Manufacturing Co* , 138 NLRB 615, *Texas Aluminum Co., Inc* , *supra*, fn 13, *Ward Manufacturing, Inc.*, 152 NLRB 1270

credibility of its avowed policy, but creating a disparity in its own favor in the execution thereof.[15]

It is accordingly found that although Respondent did not engage in improper surveillance of its employees at its Augusta Boulevard plant as alleged, nevertheless Respondent through its Supervisor Ronald Caccamo in or about September 1965 (as well as by its Supervisor Victor Kucharski in or about February 1966) unduly broadly and disparately proscribe all communication (including communication on union and lawful organizational matters) by its employee Donald Stach, known by Respondent to be a leader of union organizational activity at said plant, with other employees.

3. Wage increases to employees

The complaint further alleges that on or about September 17 (as well as later in September and in October) Respondent "discriminatorily granted large wage increases to its technical employees, in particular to its analyzers, testers, and phasers at its Augusta Boulevard, Chicago, plant." Respondent admits it raised wages, but denies it did so discriminatorily, and alleges that the raises were companywide to all employees at all plants.

It is undisputed that on the afternoon of September 17 Respondent's Augusta Boulevard technicians were individually called to the office of Plant Product Manager Burand and told in substance that a review of their work performance had resulted in the decision to raise their wage rates. Durand also told the technicians that the upward pay adjustments reflected competitors' wage scales.[16] The range of these increases was from about 9 cents to 55 cents on previous hourly pay of about $1.75–$3.75, averaging 22.2 cents per hour or 8.2 percent for all 619 Augusta Boulevard technicians.[17]

Respondent furnished an explanation for this action primarily through testimony of Kenneth M. Piper, its vice president in overall charge of personnel relations for the entire Motorola organization in all States and plants. As will be shown, his testimony was corroborated in essential aspects by documentary proof including contemporaneous records maintained by Motorola in the regular course of its business.

Piper testified that Motorola's "critical problem on attracting and holding of technicians" became so acute in the summer of 1965 that various measures were taken to attempt to alleviate it, including an intensified recruiting campaign not only within but distant from Chicago (involving relocation emoluments for recruits and $50 awards to employees recruiting new employees). In September–October, Respondent employed 619 technical employees at Augusta Boulevard alone.[18] Respondent's technician turnover statistics (Resp. Exh. 2) show a steadily rising tempo of technician requisitions at Augusta Boulevard (as well as at the Franklin Park plant) in 1965, numbering about 500 (plus about 1,200 at Franklin Park) in the first 9 months of that year. Calling attention to a Bureau of Labor Statistics 1965 statement that Chicago was the most critically labor-short area of any metropolitan American city, Piper pointed out that he directed a survey of Motorola technician turnover in the Chicago area, covering a radius of 40 miles or 1-hour automobile commuting distance from the heart of Chicago and involving a number of Motorola plants including Augusta Boulevard, Franklin Park, Cicero, Elgin, Elk Grove, Flournoy, and Palatine. Piper found that technicians "were in short supply, and there was a great deal of competition among the users of this talent in our industry and outside for these people . . . We had an economic problem of attracting and holding technical employees in the various divisions of the business." In June or July, Piper's staff also made a survey of pay rates for technicians in the Chicago area. The survey showed that the pay of Motorola technicians was around 25–30 cents per hour or 8–9 percent below that of the highest paid electronics companies.

The upshot of the foregoing was that on *August 2* Piper directed a memorandum, dated that day, to Motorola Board Chairman Galvin (Resp. Exh. 4) attaching a study and proposal dated *August 2* (Resp. Exhs. 3 and 4), in effect recommending a $3,980,000 companywide wage rate increase, and requesting an immediate meeting to "come to a conclusion on some of our previous exchanges on the increase" in view of "urgency to meet problems we are facing in the present tight market to attract and hold some of the skills we need." The attached supporting staff study from Godinez to Piper on "1965 Industry Increase Patterns and Proposals," including a statistical-type presentation of "Industry Increase Patterns" dated *July 26*, compares pay scales of Motorola and its competitors in the Chicago area, points out wage increases granted by the competitors, and emphasizes that:

> In recent months there is a change in the content of technician jobs in the production of communications and consumer goods. With transistorization and the expansion of color television technicians are required to assume responsibilities on more complex and more sophisticated products. In our Chicago area plants we are encouternig [sic] increasing difficulty in hiring and retaining people in the technical categories. Our program is structured upon the achievement of the necessary increase in the number of these people. We should make adjustments for these categories and related jobs with a view to hiring and retaining these skills we have to have in the Chicago labor market, and maintaining equitable internal relationships.

[15] Cf. *Revere Camera Co* v. *N L R B*, 304 F 2d 162, 165 (C A 7), *N L R.B.* v *Hill & Hill Truck Line, Inc*, 266 F 2d 883, 886 (C A 5), *Wigwam Mills, Inc*, 149 NLRB 1601, 1608–10, enfd 351 F 2d 591 (C A 7), *Ward Manufacturing, Inc., supra*, fn 14, *The Wm. H Block Company*, 150 NLRB 341, *Standard Manufacturing Company*, 147 NLRB 1608, *Bannon Mills, Inc*, 146 NLRB 611; *Burlington Industries, Inc.*, 144 NLRB 272, *Memphis Publishing Company*, 133 NLRB 1435 See also *Republic Aviation Corporation* v. *N L R.B., supra*, fn 14, *Peyton Packing Company, Inc.*. 49 NLRB 828, 843–844, enfd 142 F 2d 1009 (C A. 5), cert. denied 323 U S 730

[16] Durand's credited testimony to this effect was corroborated by General Counsel witness Pottebaum, an employee, who testified that when told in Durand's office of the pay increase, the latter said "something about that they were trying to bring us up to par with the rest of the companies in the area."

[17] Testimony of General Counsel witnesses Fink, Hodge, Ward, Kozak, Rasko, Nowak, Miller, Slugocki, Pottebaum, Kutzora, Bastian, and Stach, and Resp. Exh 1 There is considerable evidence of a fairly frequent smaller (around 5–10 cents per hour) raise pattern in the preceding few years According to Respondent's vice president and Personnel Relations Director Piper, wage raises of this extent were by no means unprecedented, there having been no less than 7 or 8 during the preceding 17 years

[18] The numbers of technical employees at Motorola's other plants in the Chicago area at this time were: Franklin Park "Consumers Products Division," 550, Cicero "Military Division," 125, Flournoy, 70. (Elgin and Elk Grove were not yet operative, and Palatine was just commencing.)

The study then makes alternative recommendations for raising wage rates of Motorola employees in all of its plants, not limited to Augusta Boulevard.

According to Piper, he met with Motorola Board Chairman Galvin and Company President Wavering on August 3 on the subject of this report and its recommendations, which were approved and ordered that day to be implemented, Piper being "under instructions at the [August 3] meeting to implement the recommended [wage] increase" approved by Board Chairman Galvin and Company President Wavering. The August 2 interoffice memorandum and report (Resp. Exh. 4) itself shows, in handwritten notations, that it was returned by Board Chairman Galvin to Piper on August 3, approving the higher-priced (i.e., $3,980,000) of the alternative wage increase recommendations, to be "Put in all plants" and to "Get started on announcements by Labor Day." The returned study, part of Respondent's records, also shows the marginal handwritten notation, alongside of the above-quoted portion regarding technicians' pay rates, "Get Cgo up to Zenith" (a competitor). It also shows the handwritten marginal notation at the top of the first page, "Payroll & Compensation need 2 weeks." Accordingly, Piper's staff "immediately proceeded after the [August 3] meeting to work out the details for implementing the increase . . . by the deadline dates agreed upon on August 3, 1965 . . . we agreed that the increases . . . [for] technicians . . . which were traditionally made on a merit basis, would be implemented during the month of September, beginning effective on September 13. That the balance of the increases would thereafter be implemented, not later than the end of the month on October 1."

By around August 10, Piper had "communicated verbally with the managers of each of the plants indicating the forthcoming increases. And that the [paper] work [as to precise amounts of individual increases, with supporting documentation] should be accomplished on the preparation of the increases beginning around Labor Day, a few days before, so that when I came into the plants, we could conclude the making of these individual increases." According to Piper, the reason no written memorandum was issued with regard to this was fear of a leak through secretarial and similar personnel. Piper's quoted testimony, which is in accord with the aforequoted documents prepared and maintained in the regular course of Respondent's business operations, is further fortified by credited testimony of Respondent's Chicago Area Personnel Director Wrenn, who testified that he knew "early in August" that Augusta Boulevard employees were to get a wage increase, and that his office began receiving "change in status" forms reflecting the precise pay changes about "a week to 10 days" prior to September 17, the processing of these forms through the various supervisory channels in the plant itself having actually started earlier than that, say from September 7 or even before.[19] According to Piper, the paperwork involved in review of the individual records of the approximately 700–800 employees receiving the September wage increase at Augusta Boulevard, to determine the precise amount of increase in each case, began shortly prior to Labor Day and "was completed on or about the 13th or 14th of the month [September][20] . . . I know it was completed on the 15th of the month. That is the reason I proceeded over there [Augusta Boulevard] at that time [September 15]."

A staff memorandum to Piper, prepared in the regular course of Respondent's business operations, on the subject "Annual Increase–1965–Instructions," dated *August 27*, contains:

> the final detailed instructions which we will follow in implementing the 1965 annual increase. They reflect the terms approved the early part of this month by [Board Chairman] Bob Galvin in his discussions with us and as you have already outlined them to some division heads.
>
> You will note that the adjustments for our technical and related employees in our Chicago area plants will be handled in advance of the announcement of the increase for the other employees. The adjustments for technical employees will be made effective September 13, 1965, the date which we scheduled earlier this year for the semiannual wage and salary review.
>
> Changes in status must be prepared for each employee involved in the above adjustment and processed by the compensation, records and payroll people in time for the September 13 payroll. These adjustments for these employees will reflect normal performance increases combined with the necessary equity and labor market adjustments which will constitute the increase for these people, which we estimate will approximate somewhere between 8 and 10% for the total group in the Chicago area. The annual increase and the additional performance increases can be expected to run about 4 to 6%. Additionally equity and labor market adjustments should be about 3 to 5% net for this group.
>
> The normal performance adjustments, with the scheduled annual increase should maintain adequate internal and external relationships for technical employees in the plants outside the Chicago area. For example, average rates of Phoenix technicians are higher than Chicago and are competitive to rates paid technicians in that area. Hence, the average adjustment in Phoenix would be lower than Chicago where we have to catch up with our competition.
>
> This adjustment for Chicago area technical and related employees during the period of September 13–28 will then give us about a week's net time to determine and apply the approved increase to the balance of employees.

The detailed instructions attached to this *August 27* staff memorandum show that "Technical and related employees will receive verbal announcement from supervision during week of September 13 to 17 . . . For technical and related employees whose increase is announced during September 13 to 17, effective date is September 13, appearing in checks dated September 24,"

[19] The paperwork processing approval chain on the "Change-In-Status" pay increase forms is from supervisor to products manager to plant production manager to personnel to wage and salary unit G C Exh 8 and Resp Exh 11 are examples of Change-In-Status forms, showing supervisory and personnel approval processing dates from September 6 to 13.

[20] This is consistent with the dates appearing on the Change-In-Status form of employee Carroll (Resp Exh. 11), introduced in another connection, as well as with the Change-In-Status form of employee Stach (G.C Exh 8), also introduced in another connection September 13 (Monday) was only 4 weekdays after Labor Day (September 6).

and that "Chicago area technical and related employees will receive equity adjustments effective September 13, with all processing to be completed by September 28." The August 27 staff memorandum to Piper bears handwritten marginal comments or notations, presumably his, with regard to the September 13–17 wage raise announcement date for technicians, "Payroll has enuf [sic] time? . . . Check"; and, with regard to the equity adjustment for Chicago area technicians, "Get all Foremen & dept. head ratings before Labor Day, if possib[le]."[21] The beginning of the first page also contains the notation, "Handling in Cgo personally" (i.e., presumably personally by Piper). The August 27 memorandum also points out that:

> Annual expense in increased base wages and salaries for 24,600 hourly-rated and weekly-salaried employees (including technical employees) is estimated at about $3,980,000. Added expense for the last thirteen weeks of 1965 would be $995,000.

A handwritten addition of these amounts, on the memorandum, shows a total of $4,975,000.

As has been indicated, technicians at Augusta Boulevard were individually informed of the increase on September 17. According to Piper, supported to an extent by the August 27 memorandum, as shown, the decision to notify technicians verbally of the increase, was made well in advance of August 27. However, for administrative reasons—which cannot be regarded as unusual or inconsistent with reasonable personnel practices—Piper had given instructions that the subject of the upcoming wage increases was not to be disclosed prior to its communication to the individual recipients in accordance with the "August [27] instructions indicat[ing] that all of the increases were to be made and communicated during the week of September 13." When the apparently huge amount of paperwork was completed in connection with the precise amounts of the pay raises at Augusta Boulevard for the 619 technicians[22] there, on September 15, as shown above, Piper proceeded to that plant to oversee the implementation thereof, in accordance with his earlier plan to do so personally.[23] At this time (September), the total number of technicians in Respondent's employ was around 2,500–2,600. *All 2,500–2,600 technicians received the September–October wage increase, in approximately the same amounts and upon the same basis and in accordance with the same plan approved on August 3 by the company president and chairman of the board,* as has already been described. This represented a companywide wage increase of approximately 9-1/2 percent for all technicians in all plants. Indeed, the raise was not limited to technicians, but was given to all Motorola employees, unskilled as well as skilled, hourly as well as weekly paid—in all, some 25,000 employees—at a total annual cost of $3,980,000.[24] Of this $3,980,000, only around 1–2 percent ($39,800–$79,600) was allocable to Augusta Boulevard technicians.

While Piper was at Augusta Boulevard in connection with implementation of the wage increase to the large number of technicians there—he had arrived on Wednesday, September 15, in accordance with previous plans to oversee this personally—on Friday, September 17, when the verbal notifications (also in accordance with previous plan) had been authorized and were about ready to be made by subordinate managerial personnel, in the early afternoon of that day a letter dated the previous day (September 16) was received by Augusta Boulevard Production Manager Law from the Union.[25] The union letter (G.C Exh. 3) places Respondent on formal notice of the Union's current organizational campaign among its technicians and that it is "therefore formally requesting that you in no manner intimidate, coerce, or otherwise interfere" with employees' rights under the Act, and that unfair labor practice charges would be filed if the Company "implement[s] new benefits or wage increases during this period . . . during the period of time that they [employees] are engaged in an organization campaign to establish for themselves collective bargaining rights."[26] When Law showed him this letter, Piper at once telephoned Company Industrial Relations Counsel Shroyer in Washington, telling him "we were in mid-stride on a wage increase which we had been in the process of preparation for months, and that I had already released the authority to communicate the wage increases to the individuals, and I asked him for guidance. He [Counsel Shroyer] asked me to read the [union] letter to him, which I did. And I asked him, 'what should I do?' He said, 'Proceed with the increases.'" Piper did so, permitting Augusta Boulevard subordinate personnel to proceed with notification of technicians' increases that afternoon (Friday, September 17);[27] and himself

[21] It will be recalled that Augusta Boulevard alone employed 619 technicians. The date of this staff memorandum (Resp. Exh. 5) to Piper is August 27 (Friday). Labor Day was September 6 (Monday).

[22] With documentary corroboration (Resp. Exh. 3–4 and 5), Piper testified that in arriving at the actual amount of increase for each employee, final determination of the precise number of cents per hour was made by the foreman or products manager familiar with the individual employee's performance.

[23] Resp. Exh. 1 recapitulates these wage increases for Augusta Boulevard technicians. According to Piper, identical or comparable increases were given to all technicians in all other Motorola plants in the Chicago area, all Illinois cities, and Arizona, at the same time (i.e., September 1965) as at Augusta Boulevard, in execution of the instructions received by him from the president and chairman of the board on August 3, described above.

[24] As already stated in another connection, credited testimony of Piper establishes that during the preceding 17 years there had been at least seven or eight instances of comparable or greater wage increases at Motorola.

[25] It will be recalled that this (September 17) was on the third day of Piper's presence at Augusta Boulevard in connection with implementation there of the described company decision of August 3 for companywide wage increases.

[26] Piper testified that this was his first knowledge as to union activity at Augusta Boulevard. There is no substantial evidence of such knowledge on the part of Piper or any other official of Respondent instrumental in the wage increase decision at or near the time (August 3) when the $3,980,000 companywide wage increase was decided upon and ordered to be implemented.

[27] Apparently all technicians at Augusta Boulevard were notified of the increase on September 17. General Counsel witness Carroll—a phaser-tester in September in a different Augusta Boulevard campus building (T Building) than that in which other technicians worked—testified that he received his wage increase in early October, but conceded on cross-examination that (as shown on his Change-In-Status record, Resp. Exh. 11) he received the increase as of September 13 and that he "could be mistaken" as to the October date, and that "everybody got it at the same time." Carroll also appeared to regard October as the time—rather than September, as General Counsel's proof through union witnesses showed—when he received union literature by mail. Under the circumstances, and accepting Piper's testimony that T-Building employees were also informed of the wage increase on September 17, I do not credit Carroll's contrary testimony, attributing it simply to memory imprecision as to dates.

continuing on the ensuing Monday (September 20) to Respondent's other Chicago area plants commencing with Cicero, and ending with Phoenix, Arizona, in accordance with a "schedule, timed right up to September 28." Thereafter, also as planned,[28] the remaining wage raise decisions of August 3—in particular so far as Motorola nontechnicians were concerned—were implemented.

As already indicated, Respondent does not deny that it raised employees' wages appreciably on September 17. However, it disputes doing so for coercive or other reasons in violation of Section 8(a)(1) of the Act as charged. The principal questions to be considered in this connection are the date, circumstances, and extent of Respondent's knowledge of union organizational activities; the date, circumstances, and extent of Respondent's *decision* to raise wages; and the date, circumstances, and timing of Respondent's *announcement* of its decision to raise wages.

It is perhaps appropriate at the outset of consideration of these matters to evaluate the testimonial quality of Respondent's Vice President Piper, upon which resolution of factual aspects of these issues in significant part depends. Observing his demeanor with care, I was favorably impressed with the straightforward, convincing manner in which he testified. His testimony remained substantially unshaken on searching, spirited cross-examination by experienced, able counsel for General Counsel. Furthermore, chief essentials of his testimony were corroborated not only by testimony of other credited witnesses,[29] but by documents[30] prepared and maintained by Respondent in the regular course and conduct of its business operations. All circumstances considered and upon the record as a whole, I credit Piper's testimony in its essential aspects.

With regard to Respondent's knowledge of union organizational activities, Piper testified—as has already been stated in another connection—that his first knowledge of union activity at Augusta Boulevard came when that plant's Production Manager Law showed him the Union's September 16 notification letter (G.C. Exh. 3) in the early afternoon of September 17. This is not incredible considering Piper's relative eminence in Motorola's organizational hierarchy. Respondent's Augusta Boulevard technicians' foreman, Diggs (superior of Supervisors Caccamo and Hinton), too, stated he was unaware of union activity until September 17. However, an admission was elicited from Respondent's low-level Supervisor Caccamo that he (Caccamo) was aware that employee Stach was "talking to employees" about wages and working conditions in August, and that he (Caccamo) mentioned this to Diggs.[31]

Employee Stach—identified in the union's notification letter to Respondent of September 16 as chairman of the Union's plant organizing committee—testified that he himself only signed a union authorization card on August 7 (i.e., *after* Respondent's August 3 decision for the companywide wage rate increase), and that in the second week of August he spoke intermittently on nonworking time to some 30 or 40 employees about the advantages of unionization, distributing around 40–50 union cards in August prior to August 23. There is no evidence as to how many out of this estimated alleged 40–50 signed the cards, although according to Stach about a dozen including himself formed the nucleus of union activists. Considering the large number of technicians at Augusta Boulevard (619) and the larger number of total employees there (Stach testified he also distributed union cards to employees other than in his own department), this would appear to be less than an impressive showing of necessarily substantial union activity in the period of over about a month now claimed by the Union to have been involved. It will be recalled that Union International Representative Chiakulas himself merely testified somewhat vaguely to some alleged "initial meetings" with "one or two" unidentified "individuals" in July and August; to giving some 50 union cards to Stach in August; and that union literature mailings occurred only on September 8 and 16, as well as probably on September 4 (in any event, none before September). It is undisputed that the Union's notification letter of September 16 (G.C. Exh. 3) was its first written communication to Respondent.

Close analysis of Caccamo's testimony (including his insistent denials of knowledge of the Union prior to around September 17) and of the remainder of the record (including Stach's testimony) indicates that although Caccamo knew as early as August that Stach was "talking to employees" in disgruntled fashion about the wage and working situation at Augusta Boulevard, in view of Stach's own testimony that his distribution of union cards commenced around the second week in August, Caccamo could hardly have been aware of union activity on or prior to August 3 (the date of Respondent's decision to increase wage rates throughout the Company in September–October). The same may be said of Respondent's Supervisor Hinton and Kucharski, who testified they were unaware of union activity at the plant prior to September 17.

In the existing state of the record, I find that it has not been established by substantial credible evidence that Piper or any other of Respondent's officials involved in the August 3 decision to grant a companywide wage rate increase in September–Otober, had knowledge on or prior to August 3 or at any time prior to September 17, of union activity at Augusta Boulevard; that it has not been established by substantial credible evidence that any of Respondent's managerial or supervisory personnel had such knowledge on or prior to August 3; and that even assuming *arguendo* that such knowledge ascribable to Respondent existed, it was not a controlling or significant factor in Respondent's August 3 decision to grant and implement at the time and in the manner that it did, the described wage rate increase affecting (among all other Motorola employees) the Augusta Boulevard technicians.

With regard to the date, circumstances, and extent of Respondent's decisions (1) to raise wages and (2) regarding the timing of implementation thereof, the substantial credible evidence, which has already been reviewed in detail, consisting primarily of credited testimony of Motorola Vice President Piper corroborated

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[28] Resp Exh 3–4 and 5, G C Exh 6 and 7 Respondent's staff recommendation of August 2, approved August 3 by the company president and chairman of the board, bears the handwritten notation, "Do equity [i e , Chicago] adjustments first—apply merit plus adjustment" (Resp. Exh 3–4) Technicians' wage increases were by August 27 (Resp Exh 5) scheduled by Respondent for September 13–17 announcement, about 2 weeks prior to the nontechnicians' increases

[29] Wrenn, Durand, and Pottebaum

[30] Resp Exh 3, 4, 5, and 11, G C Exh 8, 6, and 7

[31] At one point Caccamo indicated it was in July that he first learned of this activity by Stach Since this appears to antedate even Stach's claims of union activity, it may be regarded as yet another testimonial aberration by Caccamo

by Respondent's contemporaneously prepared business records, satisfactorily establishes that those decisions were made on August 3, in advance of and not by reason of knowledge on Respondent's part of union activity at the Augusta Boulevard plant; that those decisions were companywide, affecting not merely the 619 technicians at that plant, but all 25,000 Motorola employees at all of Respondent's plants, at an annual cost close to $4 million; and that final implementation of those decisions at Augusta Boulevard during the week of September 17, as planned, was for practical purposes complete for announcements there (also as planned) on September 17 when the Union's notification letter of Septermber 16 was received on September 17.[32] It seems appropriate to mention in this connection that the accuracy of Respondent's counsel's statement at the hearing[33] that Respondent's described corroboratory documentary records (Resp. Exh. 4 dated August 2–3 and Resp. Exh. 5 dated August 27) as to its August 3 decision to raise wages companywide and its implementation as shown by the handwritten comments thereon, was furnished to General Counsel in February 1966—months in advance of this hearing—is conceded upon the record. There is no justifiable basis for doubting the accuracy of these records maintained by Respondent in the regular course of its business. Nor am I able to assign controlling significance to the extent of the wage increases or the verbal manner of their announcement. As shown, the dollar amount of the increases was far from unprecedented in Respondent's history. The decision to make verbal announcement thereof had been made in August, and the fact that Respondent chose to make the notifications to the affected personnel in its offices personally appears to be well within its personnel management prerogatives, insufficient in itself to constitute violation of the Act under the nondiscriminatory and noncoercive circumstances shown.

The wage rate raise aspect of this case involves alleged violation only of Section 8(a)(1), and not Section 8(a)(5), of the Act, i.e., there is here no allegation of violation by Respondent of any duty to bargain. It is not a violation of Section 8(a)(1) for an employer to carry out a wage raise plan already decided upon, without advancing its effective date. *Champion Pneumatic Machinery Co.*, 152 NLRB 300; *Dan Howard Mfg. Co. et al.*, 158 NLRB 805; *Divco-Wayne Industries, Inc.*, 154 NLRB 974; *T. L. Lay Packing Company*, 152 NLRB 342; *True Temper Corporation*, 127 NLRB 839, 842–844; *Derby Coal & Oil Co., Inc.*, 139 NLRB 1485, 1486.[34]

In sum, the principal considerations which appear to compel the conclusion that the wage rate increase here in question was nondiscriminatory and noncoercive are: credited testimony of Respondent's Vice President Piper that the decision to raise wages, for eminently valid and established economic reasons, was made on August 3 and at the same time its implementation timed to begin in September, with initial implementation for technicians and Chicago personnel; the documentary corroboration of Piper's testimony by contemporaneous records prepared and maintained in the regular course of Respondent's business, furnished by Respondent to General Counsel sufficiently in advance of the hearing to permit investigation and verification; the undisputed fact that the wage rate increase was companywide (over 25,000 employees), not limited to Augusta Boulevard technicians (619); the substantial cost of the companywide wage increase ($3,980,000 annually), the miniscule proportion (about 1–2 percent) allocable to Augusta Boulevard technicians, and the improbability that such an expense would be undertaken by Respondent merely by reason of

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[32] For example, G C Exh 8, employee Stach's Change-In-Status personnel record form establishes that his September 17 wage increase (in implementation of the August 3 decisions) was formally recommended of record on September 6 by Foreman Diggs, approved by Product Manager Durand and by Production or Plant Manager Law on September 7, and processed by the personnel unit on September 10 and by the compensation unit on September 13, all processing being complete on September 13, the effective date (as planned) of the increase, it then remaining only to notify him thereof

[33] Transcript pp. 487–488

[34] "What is unlawful under the Act is the employer's granting or announcing such benefits *for the purpose* of causing the employees to accept or reject a representative for collective bargaining." *Hudson Hosiery Company*, 72 NLRB 1434, 1437. See also *N L R B.* v. *Exchange Parts Company*, 375 U S 405, 409 Employer motive in cases of this type is to be assessed from the total stream of preceding, concurrent, and subsequent related circumstances. *N.L R B* v *Harbison-Fischer Manufacturing Co*, 304 F.2d 738, 739–740 (C A 5) I have endeavored to follow these and other applicable principles in assessment of the effect of the evidence herein Unlike the situation described in *Betts Baking Company*, 155 NLRB 1313, here the substantial credible evidence overwhelmingly establishes that the Employer had definitely decided to institute the wage increases, on a nondiscriminatory companywide basis, well prior to its learning of union activity (which was shown to have occurred in only a part of one of many plants), and further, indeed, had actually taken and for practical purposes completed steps to implement that decision before it learned of the union activity. Moreover, unlike *Betts*, the substantial credible evidence here amply establishes that the employer's announcement of the plan was not made or timed with the purpose of dissuading employees from engaging in union activities, even though it cannot be said with certainty that it was completely devoid of that effect However, upon the record presented, including the apparent small degree of union adherents, this would be speculative Moreover, Respondent's Vice President Piper offered a wholly credible, reasonable explanation for its failure or inability to announce the raise prior to the time it did, as well as a credible explanation for its announcement at the time and under the circumstances utilized under its personnel policy The mere incidental result, as distinguished from motivating cause, of detraction from union support, in consequence of the carrying out of an employer's previous plan to raise wages, does not constitute a violation of Section 8(a)(1). *Dan Howard Mfg. Co et al*, 158 NLRB 805 Under the circumstances here established, a conclusion that the *timing* of the raise, although not the raise itself, was violative of the Act would in effect have required the employer to withhold or alter its decision, made well prior to knowledge of union activity and apparently prior to plant union activity itself, to institute a general companywide wage increase for demonstrated essential business reasons The record here does not, in my opinion, warrant such a conclusion nor the findings of fact necessary as supportive underpinning therefor

On brief, for the first time, General Counsel calls attention to another proceeding—some 15 years ago—involving actions by Respondent said to be comparable to those herein (Cf *Motorola, Inc*, 94 NLRB 1163, enfd 199 F 2d 82 (C A 9), cert. denied 344 U S 913) In that case, however, it does not appear that, as here, the decision to raise wage rates had actually been made and phased prior to the Union's recognition demand or the employer's knowledge of union activity No evidence of patterned behavior was presented herein I am unable to judge Respondent's present conduct upon the basis of its alleged past derelictions.

the relatively slight union organizational activity among Augusta Boulevard technicians;[35] and the credited testimony of Respondent's witnesses, notably its Vice President Piper, that the August 3 wage rate increase decisions' implementation at Augusta Boulevard had in effect been fully processed for announcement at the time the union notification letter of September 16 was received on September 17.

Still another aspect of the question of the effect of Respondent's wage rate increase merits mention. This is that under the circumstances of this case, Respondent having long since decided to institute the general pay increase and being in actual process of implementing that decision, if Respondent upon being apprised of the union activity had withheld that pay increase, such forbearance might well have been regarded as an unlawful attempt to bring pressure upon the employees to reject the Union, constituting an unfair labor practice. See *Federation of Union Representatives* v. *N.L.R.B.*, 339 F.2d 126, 129–130 (C.A. 2); *Dixie Broadcasting Company*, 150 NLRB 1054, 1073–76; cf. *N.L.R.B.* v. *Crosby Chemicals, Inc.*, 274 F.2d 72 (C.A. 5).[36] Implementation or postponement under noncoercive circumstances of a unilateral wage increase decision noncoercively arrived at is not rendered unlawful merely because occurring during organizational efforts. *Standard Coil Products, Inc.*, 99 NLRB 899, 903.

Upon the record as a whole, I find that it has not been established by substantial credible evidence that Respondent's September 17 (nor, as also alleged, October), 1965, wage increases to its technical employees, including its technical employees at its Augusta Boulevard, Chicago, plant, were discriminatory or coercive or so motivated, or otherwise violative of Section 8(a)(1) of the Act.

D. *Alleged Violations of Section 8(a)(3)*

The complaint further alleges that on or about August 23 Respondent demoted employee Stach from analyzer to tester and has since then kept him in that position and deprived him of overtime opportunity, because of his union or other activity protected under the Act.

Stach entered Respondent's employ as an analyzer in June or July 1962. On August 23, 1965, he was transferred from the position of analyzer to that of tester. Although this involved no reduction in wage rate,[37] the position of tester is more onerous or otherwise less desirable than that of analyzer, since the tester job (requiring less skill)[38] is less interesting, essentially dull, requires constantly sustained standing, and affords less opportunity for overtime.[39] The transfer was thus demotional. Inasmuch as Respondent concedes that its action transferring Stach from analyzing to testing was a disciplinary measure, there is no need to dwell further on this aspect of the matter. It remains, however, to determine whether or not this change in status was discriminatory or coercive in violation of the Act, Respondent contending it was merely disciplinary. Resolution of the issue of the true motivating factor for the change in Stach's status requires close scrutiny of the surrounding factual agglomerate from which Respondent's personnel action takes its character,[40] since it is not violative of the Act to discipline, demote, or discharge an employee for nondiscriminatory or noncoercive reason or even for no reason.[41]

In the course of his initial period of 3 years (June 1962–June 1965) of apparently essentially satisfactory employment tenure as an analyzer, Stach had received a number of routine or regular small raises or wage adjustments. According to his testimony, prior to August 23, 1965, he had received no written or oral reprimand or adverse criticism, but on the contrary had been "complimented," on his work. His initial contact with the Union was in the first week of August, when, in the course of a discussion at his (Stach's) home with a visiting president of a neighboring plant local, Stach agreed to attempt to organize at Augusta Boulevard. Stach

[35] To be sure, it could be conjectured that if Respondent supposed that possible eventual unionization of its Augusta Boulevard technicians would be a spreading contagion to its technicians at its other Chicago plants and elsewhere, it may have felt itself impelled to expend around $4,000,000 per year throughout its entire organization because it saw the handwriting on the wall This, however, would be purely speculative surmise It could also be conjectured, on the other hand, that the union notification and warning letter of September 16 to Respondent was the result of a "leak" of Respondent's supposedly well-guarded intention to implement its August 3 wage rate raise decision by around September 17. Indulging in neither type of speculation, findings herein are based upon adherence to the record as made

[36] Perhaps particularly in view of this aspect of the case, it would seem that Respondent's Counsel Shroyer was sound in his September 17 advice that his client should proceed with completion of implementation of its August 3 wage rate decision, Cf., e g., monetary payment provision of Board Order in *Dixie Broadcasting Company*, 150 NLRB 1054, 1081

[37] The mere fact than an employee's transfer involves no reduction in pay does not mean it is not violative of the Act *Des Moines Foods, Inc* , 129 NLRB 890, enfd 296 F 2d 285 (C.A 8)

[38] The tester merely superficially tests products for performance, routinely rejecting those which do not work, for sophisticated troubleshooting analysis by the analyzer to determine the flaw or flaws It is apparent that the tester job is essentially a large quantity "production" type or rotework, whereas the analyzer job is a skilled or semiskilled "quality" job requiring expertise and not directly tied to a quantitative "production" yield

[39] Credited testimony of Stach establishes that take-home pay of testers is almost invariably less than that of analyzers, since "it is the policy of Motorola that an analyzer . works a lot more overtime than testers Testers work very little overtime compared to an analyzer " According to Stach, as an analyzer (for approximately 3 years) he worked at time-and-a-half overtime pay "from 2 to 15 hours a week" or "approximately 8 hours a week," while as a tester for almost a year since his August 23 disciplinary transfer he has had *no* overtime although other testers on his shift as well as analyzers have worked overtime At the hearing, Respondent stipulated that since Stach's disciplinary transfer of August 23 he has also been "deprived of overtime as a disciplinary measure " Stach testified credibly that it has been the practice at Augusta Boulevard for supervisors to assign employees to overtime without waiting to be requested for it, and that he knows of no other instance of disciplinary deprivation of overtime Corroborating the foregoing in part, tester Hodge, a relatively new employee, testified credibly that since his hire in mid-September he has been asked to work overtime about once a week, and analyzer Nowak credibly testified that in September overtime was "fairly frequent . . . almost every day" on the day shift. Respondent's Supervisor Caccamo testified that testing is a standing whereas analyzing is a sitting job, and conceded that analyzers have opportunity for "a great deal more overtime."

[40] See, e g., *Wigwam Mills, Inc.*, 149 NLRB 1601, enfd 351 F 2d 591 (C A 7), *Dixie Broadcasting Company*, 150 NLRB 1054, *Des Moines Foods, Inc* , 129 NLRB 890, enfd. 296 F 2d 285 (C A 8) "We have determined that the 'real motive' of the employer in an alleged §8(a)(3) violation is decisive . . " *N L R B* v *Brown*, 380 U S 278, 287

[41] *N.L.R B* v *McGahey*, 233 F 2d 406, 413 (C A 5)

(with several fellow employees, including Pottebaum) accordingly met Union Organizer Chiakulas in "possibly the 2nd or 3rd week in August,"[42] receiving from him some 40 or 50 union cards for collective-bargaining authorization purposes. He accordingly then commenced to speak to fellow employees (estimated by him at 30–40) about the Union and its potential advantages, in the plant cafeteria during nonworking time as well as outside of the plant, distributing union cards at the same time There is no question that Stach was the sparkplug of the union activity at Augusta Boulevard; in its September 16 letter to Respondent notifying it of organizational activity at the plant, the Union characterized Stach as "chairman of our [i.e., the Union's] UAW Organizing Committee made up of your employees."

Stach testified that with his advent into union organizational activity in mid- or late August, his supervisors at Augusta Boulevard "were no longer congenial. They were harsh, constantly watching me. I have been watched ever since I started the Union campaign, constantly . . . Ronald Caccamo, and Robert Diggs would watch me." At this time (late August) his immediate supervisor was Caccamo (or, in his absence, Hinton) and Caccamo's supervisor was Foreman Diggs On August 23, Hinton (in the absence of Caccamo) told Stach, without previous notice, to "pack up [your] personal belongings and move to a test position." Later that day, Stach asked Caccamo why he had been transferred. According to Stach, "Caccamo stated that I had been talking to the other employees about a union, and that he was demoting me as a tester as a result," and that he (Stach) was "poisoning the minds of the other employees against him and the company about starting a union." Further according to Stach, at his work station around September 10 Caccamo accosted him with, "Why are you still working here? Why don't you quit? Why aren't you looking . . . weren't you looking for a different job previously? Couldn't you find any? Why do you keep poisoning the minds of the other employees?" When Stach answered, "I like working at Motorola. If you want me to leave, why don't you fire me," Caccamo replied, "I can't." Also according to Stach, about a week later, around September 16, again at his work station, Caccamo engaged him in an hour-and-a-half discussion, accusing him of creating job dissatisfaction among employees and "poisoning their minds with the union," and importuning him to cease his union organizing.[43] As credibly described by Stach, Caccamo spoke harshly, "became quite heated," and jabbed his finger into Stach's chest for emphasis. However, far from desisting from his union activities, after Respondent's described September 17 wage rate increase, Stach (as well as other employees) commenced wearing a union emblem and actively continued organizing

Respondent's evidence to justify its transfer of Stach to the less desirable position as tester on August 23, was provided largely through testimony of his immediate supervisor, Caccamo, supplemented to a degree by others. Caccamo at first stoutly insisted that he had no knowledge of organizational activity by Stach prior to September 17, when he first learned of it on being told that Plant Manager Law had received a letter from the Union to that effect. Shortly after so testifying, however, he conceded that he knew in August that Stach had been talking to employees about poor wages and working conditions but did not know "the exact words he was using in talking to employees."[44] Also after first denying that he ever spoke to Assistant Foreman Hinton and to Foreman Diggs (his supervisor) prior to September 17 regarding Stach's organizing, Caccamo later conceded he spoke to Hinton and Diggs in August regarding Stach's talking to Motorola employees about wages and working conditions.

Caccamo testified that when Stach came to see him on the morning of August 23 after Assistant or Acting Supervisor Hinton had told Stach about his transfer from analyzer to tester, to find out why, Caccamo told him the "reasons for his transfer, and things in general about the ways he could possibly gain his position back as analyzer, things along that nature." Caccamo testified he told Stach about "his so-called goofing off, reading newspapers, sleeping on the job . . . disappearing for forty-five minutes at a time from his station . . . one occasion, winding fishing lures on the job . . . that he would have to stop these things [if he wanted his job as analyzer back]." Giving Stach "no definite date" when he could have his analyzer job back, Caccamo warned him that "he would certainly have to change his ways." Caccamo denied telling Stach he had been demoted for talking to employees about a union, or that the word union was even mentioned. However, questioning elicited from Caccamo the concession that he did tell Stach to "refrain from talking to employees during working hours, and I might have used the words, 'Refrain from talking to employees during working hours and poisoning minds toward Motorola.' And if he did not want to work in Motorola to go out and find one of these better jobs that he spoke of." Caccamo explained that by "poisoning the minds of employees" he meant that Stach "had been telling [employees] about wages that other companies might be offering, and how much janitors were making and so forth."

Caccamo testified that in June or July he had seen Stach "sleeping on the job" and "reading the newspaper once." Asked to describe his actual observation, Caccamo explained that Stach was "not in the prone position, but his eyes were closed and his head was down or dozing . . . . Dozing or sleeping, I really don't know." However, when he addressed Stach, Stach apparently responded immediately. Also according to Caccamo, some of Stach's fellow employees, including Pottebaum and Kutzora, had complained in June or July about Stach's "failure to carry his portion of the load," although Stach, who was present, disagreed.

Supplementing the foregoing, newly elevated Assistant Supervisor Hinton testified that around August 11, during Caccamo's vacation, Stach was away from his position for 30–45 minutes during overtime; "I assume he was wandering. I wasn't sure. He wasn't at his work station." And Foreman Diggs, who testified that it was he who made the decision to transfer Stach, stated that around June he had seen Stach reading a newspaper during working hours and that in the previous November (1964) Stach had been "continually talking" to a tester in the booth with him.

[42] Stach testified that although he signed his own union authorization card on August 7, he is unable to recall whether he did this when neighboring local President McGraham visited him at his home or when he (Stach) first saw Chiakulas

[43] Stach testified credibly, without essential contradiction, that his union organizational activities were limited to the plant cafeteria during nonworking time, or offplant

[44] At one point, Caccamo conceded he had heard even in July that Stach "had been talking to the employees about wages "

Stach denied that he had been guilty of any of the listed infractions or shortcomings, or that the indicated accusations had been leveled against him as now claimed. He pointed out that the position required by the close work of analyzing might result in the erroneous impression that the analyzer is asleep. He denied being absent from his work station for the period now claimed. He denied any complaint to him about his work prior to August 23. Stach's fellow employee Miller, an analyzer for over 5 years, working close to Stach, credibly testified he never observed Stach reading a newspaper during worktime. Employee Kutzora, also working in close proximity to Stach, credibly testified that during the period from May to July he at no time observed Stach reading newspapers, sleeping, or working on fishing equipment on worktime. With regard to Diggs' testimony concerning complaints by Kutzora and Pottebaum about Stach's work or work habits, Kutzora credibly testified that he at no time made such a complaint nor heard Pottebaum make one. Kutzora recalled a complaint by Caccamo or Diggs concerning a work holdup by the analyzer unit consisting of himself (Kutzora), Pottebaum, and Stach, in the early summer of 1965, but no statement that Stach was at fault; instead, Pottebaum ascribed it to poor (production) work, with which Kutzora agreed. Pottebaum also recalled such an episode, was unable to recall ascribing fault to Stach, but did recollect that they all indicated to Diggs that the basic problem was the large number of articles rejected because of faulty workmanship. Pottebaum further ascribed the 1965 complaints by management about slowness in analyzing to the fact that employees in other units were making many wiring mistakes because of unfamiliarity with the relatively new "solid state" electronics products being produced; and that analyzing consequently took longer.

Although the testimony of Respondent's Vice President Piper establishes that a system of written "Incident Reports" was in effect at the time of these alleged infractions—some of them (e.g., sleeping on the job) clearly of serious nature—with supervisors required to execute them in case of any significant infraction or shortcoming, it is conceded by Respondent that the first incident report on Stach is dated October 20, 1965 (i.e., 2 months after his demotional transfer), and that Stach's file contains nothing of a derogatory nature prior to his August 23 transfer.[45] It is further conceded that Stach was given a substantial (31 cents per hour) merit wage increase on September 17. Respondent's own Change-In-Status personnel action form (G.C. Exh. 8) shows this to have been a "promotion" for "performance," upon the recommendation of Diggs on September 6, 2 weeks after the demotional transfer.[46]

It has already been indicated that I was favorably impressed with the testimonial demeanor of Stach. The same was not true, however, of Caccamo, a hostile and evasive witness who repeatedly changed or qualified his answers, hedged, equivocated, and conveyed the impression of being at times deliberately unresponsive. On balance, comparing testimonial demeanor of the various witnesses in terms of analysis of the record, I have no hesitancy in preferring and crediting the testimony of Stach in its essential aspects. I am convinced that, notwithstanding Caccamo's equivocations and his (and Hinton's and Diggs') denials of knowledge of Stach's union organizational activities at any time prior to September 17, Caccamo (as well as Hinton and Diggs) was well aware of it (through Stach's distribution of numerous union cards and otherwise) at the time of Stach's demotional transfer on August 23. I have difficulty in believing that Respondent would tolerate in its employ an individual who actually slept on the job and was otherwise as inattentive to his work as Stach is now pictured as having been; or that Respondent would give such an employee a substantial merit pay raise, as Respondent concededly did on September 17; or that Stach (an old employee with an unblemished record), upon becoming in a sense a "marked man" because of his introduction of the Union into the plant in August would thereupon provide a hostile employer with readily avoidable ammunition for discharge. And I am wholly unpersuaded that Stach's advent into open union organizational activity in mid-August and his demotional transfer on August 23 were merely coincidental; rather, I believe and accordingly find that Stach's August 23 demotional transfer was the proximate result of his introduction of the Union into the plant and his leadership of union organizational activity there.

In addition to the asserted circumstances underlying Stach's demotional transfer on August 23, Respondent has invoked a number of alleged incidents since then in justification of its maintenance of Stach in his reduced position. Since all of these are said to have occurred subsequent to August 23, it is obvious that none of them played a role in the August 23 transfer. However, and without resolving the question of whether there can be justification for maintaining an employee in a position into which he has been unlawfully reduced, by reason of incidents occurring in the reduced position which might not have occurred if not so reduced, since the alleged incidents said to form the basis for maintaining Stach in his reduced position could arguably be regarded as independently justifying such action, they will for that reason here be considered.

As has been indicated, prior to his transfer from analyzer to tester on August 23, Stach had received no reprimands. Under Respondent's system of written reprimands or "Incident Reports," three such reports are said to result in (or justify) termination. Commencing with October 20, 1965, and thereafter in February and March 1966 Stach collected three such reports.[47]

The first of these incident reports involved an October 20 episode wherein (as described by Stach) Stach, while returning from a coffeebreak, was accosted by one Newman, described or regarded by Stach as a supervisor

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[45] I do not credit and cannot accept the attempted explanation of Respondent's Manufacturing or Product Manager Durand that incident reports were not being made out in the spring and summer of 1965 because of a labor shortage To begin with, not all of Stach's currently catalogued infractions were during this period, secondly, no reason appears why such reports could not have been handwritten, third, no effort was made to establish through substantial credible evidence any labor shortage of the variety claimed

[46] Respondent's Vice President Piper's testimony establishes that determination of the amount of such an increase is by the foreman or product manager familiar with the individual's performance.

[47] He has nevertheless, at any rate as of the date of this hearing, been continued in Respondent's employ

and acting with apparent authority as such,[48] who turned around and started to walk alongside of him, employing obscenities and accusing him of union organizing, and challenging him to a fight which Stach declined. According to Stach, after he told Newman he would report him if he did not desist and Newman nevertheless persisted, Stach reported him to Newman's Supervisor Dalusky (Galusky), as well as Personnel Manager Locke and Personnel Director Brennan, who indicated they would look into it. The next day, October 21, Stach further requested Personnel Manager Locke to remove washroom slogans about Stach and the Union, which was done. On the following day (October 22), however, Stach was called to the office, where Personnel Director Brennan introduced him to Chicago Area Personnel Director Wrenn, who proceeded to read off to Stach an incident report to the effect that Stach had falsely accused Newman of threatening and swearing at him. When Stach was asked to sign this, he refused to do so; and when he inquired whether the only witness present, one McCurdy, had been questioned, he was told to return to work. As to this particular episode, perhaps the most noteworthy aspect of it is that neither Newman nor McCurdy—apparently the only other direct participant and witness to the episode—nor Dalusky nor Locke nor Brennan was called by Respondent to testify nor was Respondent's failure to do so in any way explained. Under the circumstances, it cannot justifiably be assumed that had they or any of them testified, their testimony would have contradicted that of Stach, who impressed me as a straightforward and essentially credible witness, whose described testimony in regard to this episode I credit.

The second incident report collected by Stach after his advent into protected concerted activity at Augusta Boulevard involved an episode in February 1966. While at work then (as described by him) one Kucharski, a supervisor, approached him and inquired when he would "stop [your] union activity at Motorola, stop talking to the other workers about a Union?" When Stach reminded Kaucharski that it was his privilege to do so on his own time, Kucharski told him, "[You] speak like [you are] from Russia." Later or the next day Kucharski asked Stach to sign an incident report charging insubordination. Showing it to fellow employee Costello, Stach said it was untrue and refused to sign it. Kucharski's version of this episode is at total variance with that of Stach. Kucharski, a supervisor who described his job to be to make sure that employees are working, functioning under Caccamo and Diggs, sharply disputed the incident as described by Stach, and flatly denies ever so much as mentioning the word "union" to Stach or Stach to him, although conceding that he (Kucharski) was aware of Stach's union interest and activity. According to Kucharski, his insubordination report grew out of his asking Stach "if I could help him with anything—'Seems like you have a problem?'" when he observed Stach "sitting on his chair,"and Stach told him he did not and added, "Don't bug me, man; bug someone else." Denying that he accused Stach of talking "like . . . from Russia," Kucharski testified that *after* this incident report Stach told him (Kucharski) to return to Russia where he (Kucharski) belonged, also accusing him of being a draft dodger without citizenship papers and implying that he could not even spell; but that he (Kucharski) made no incident report about this because he "didn't consider this as an incident report." Disputing Kucharski's version, Stach pointed out that as a tester he does not sit but stands at work,[49] and that since at the time of the incident he was working with a set plugged in, the only place he could have sat (as claimed by Kucharski) would have been on the workbench, which is 5 feet from the ground and that he was not seated there or elsewhere. Kucharski conceded that Stach refused to sign the incident report because he claimed "It is all lies and it is not true." As already indicated, I observed Stach to present a straightforward and convincing demeanor. I cannot say the same for Kucharski, whose insistence that the word "union" on no occasion was ever so much as uttered between him and Stach is difficult to believe in the context of the record presented. Kucharski's demeanor impressed me as that of an individual bent on pleasing his employer through testifying in its favor in an emotional manner and through demonstrating his strong hostility to union activity and therefore to Stach as its prime exponent. Balancing comparative demeanor observations, I am unable to accept Kucharski's version of this February 1966 incident and I credit that of Stach.

The third (and last) incident report against Stach is one on March 21, 1966, also by Kucharski. According to Stach, while he was at work in March 1966, Kucharski approached and told him to stop his union activities, that he was wasting his time, that most people there didn't want a union, and that Stach "would ruin everything" for Kucharski. Later that day, Kucharski called him to their personnel office, where, when an incident report was read to him charging insubordination to and swearing at Kucharski, he stated it was untrue and was told to leave. As with the incident report of February 1966, Kucharski's version is sharply at variance with that of Stach. It has already been pointed out that Kucharski absolutely denies ever mentioning the word "union" to Stach or that Stach ever mentioned it to him. According to Kucharski, as he passed Stach on March 17, 1966, Stach muttered or called him by an obscene name, which he (Kurcharski) "didn't even consider . . . as an incident . . . . That was the end of it"; and that on or about March 21, 1966, while passing by Stach's workplace, in indicating to him that his cable was broken Stach attracted his attention by a vulgar or unduly familiar salutation with which Kucharski was acquainted and had heard in the plant but "not to a supervisor." After the cable was repaired, Stach allegedly again indulged in this vulgar familiarity current in the plant but, according to Kucharski, not by an "employee talking to a supervisor." In support of Kucharski's version, recently elevated Assistant Foreman Hinton testified that around March 21, 1966, he heard Stach call Kucharski by the described

[48] Although Newman's personnel record indicates that on October 20 he was classified as a production technician, Respondent's Chicago Area Personnel Director Wrenn testified that it was not company practice to show on an employee's personnel record an acting or temporary supervisory status Particularly in view of a seemingly comparable type of status for a time in the case of Hinton (concededly of supervisory character as early as April but not given that title until September 13) and on the basis of Stach's credited testimony it would appear that the status of Newman (who was unexplainedly not produced by Respondent to testify) was of supervisory nature or on behalf of and in the interest of Respondent with its acquiescence, although not materially in issue here

[49] It will be recalled that even Respondent's and Kucharski's Supervisor Caccamo described tester work as a standing job However, Kucharski testified that there have been unauthorized chairs in Stach's area where employees could have sat before the chairs were removed

designation, which Hinton agreed was in use (including by himself) in the plant, but which he had not heard between supervised and supervisor. This was Hinton's first knowledge of an employee reported for this; subsequent to the described incident report of March 21, 1966, such language has continued to be in currency in the plant; and Hinton has at no time reported any employee for it. Stach disputes Kucharski's version of the March 1966 occurrance, the incident report of which apparently itself indicates that Stach stated the charges were "untrue and biased and none of his fellow workers were witnesses."

On straight demeanor comparisons I find myself in a state of unpersuaded uncertainty as to whether Stach made the colorful remark(s) attributed to him by Kucharski, and accordingly am unable to resolve credibility in Kucharski's favor under circumstances where he or his side would appear to carry the burden of persuasion. However, assuming *arguendo* that Stach muttered or uttered in earthy fashion as claimed, it should be observed that although the incident report refers to obscenity both on March 17 and on March 21, Kucharski himself testified that the March 17 incident he "didn't even consider . . . as an incident . . . . That was the end of it"; and Hinton confirmed only the March 21 episode. It is further apparent from the testimony of Supervisor Hinton as well as that of Kucharski himself, that the particular earthy expression or virile verbalism attributed to Stach was neither novel nor, apparently, in disfavor in this particular plant, even though good taste or sense would perhaps have dictated restraint in its use among nonequals—even *vis-a-vis* a low-grade supervisor—in the organizational hierarchy. There is no claim, however, that out-of-channels plain talk in the factory had ever other than in Stach's case resulted in formal censure. The testimony of Supervisor Hinton that he has never reported anybody for such a verbalism suggests, against a background of some apparent animosity by Kucharski toward Stach, that Kucharski's action may have been the product of personal pique, atypical severity of supervisory viewpoint, or desire to impress his employer or "make a record" against one already in heavy disfavor. Moreover, considering fellow Supervisor Hinton's apparently greater tolerance of such vulgarity, it would seem not amiss in fairness to apply Supervisor Hinton's perhaps lower standards than Supervisor Kucharski's as to employees' linguistic requirements in this particular factory milieu, as a yardstick of the permissible and impermissible, in view of the apparent absence of a published rule or other adequate notice.[50]

Furthermore, understandably irked, and perhaps even endangered, as Stach indicated himself to be at the constant onerous surveillance being exercised over him[51] and Kucharski's resentment-evoking provocative hostility toward him for merely doing what the Act allowed him to do, this aspect of the case may thus at worst suggest a person maintained in pillory unlawful in its inception, because of an indelicate or unfortunate remark occasioned by resentment at being continued in unlawful pillory. So viewed, the policies of the Act would not appear to be advanced by sanctioning fresh disciplinary measures by an employer because of the foreseeable reaction of an employee to a continuing earlier unlawful disciplinary action against him. By perhaps poor analogy, a tormenter is hardly in a position to complain about a tormented outcry, particularly when not made so loudly as to attract the attention of others.

Where, through substantial credible evidence, General Counsel has (as here) *prima facie* established a basis for finding that an employer's discharge or other disciplinary action against an employee is coercive, discriminatory, or otherwise unlawful under the Act, and the employer undertakes to establish a different basis for his action, the burden of proceeding with evidence shifts to the employer to establish, through substantial credible evidence, his asserted basis for his action. If the employer does not assume or satisfy that burden, the basis remains for a finding adverse to him by reason of General Counsel's *prima facie* showing. Such is the situation here, General Counsel having established a *prima facie* case of unlawful disciplinary action by Respondent against Stach, and Respondent having failed through substantial credible evidence to establish its asserted basis for its action. Thus, Stach, a satisfactory employee of over 3 years' standing, without reprimand or other adverse personnel action or blemish on his employment record prior to August 1965, in that month commenced to engage in—indeed, he was the employee who initiated—union organizational activity in Respondent's plant; promptly thereupon, on August 23, he was summarily transferred to a concededly less desireable position; soon thereafter, he began to collect a series of formal reprimands, for reasons here found incredible, not established, or pretextuous; and since August 23—although given a substantial wage increase on September 17 for good work performance—he has for the same pretextuous "reasons" been maintained in that less desirable position, involving among other things total disciplinary deprivation of overtime.[52] I find these actions of Respondent, including its original August 23 demotional transfer action of Stach and its actions thereafter in maintenance of that transfer, to have been and to continue to be discriminatory against Stach and coercive against him as well as other employees by reason of his initiation and leadership of Union and other organizational activities among technical employees in Respondent's Augusta Boulevard, Chicago, plant, substantially as alleged in the complaint.[53] [54]

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[50] The Board is not unaware that linguistic style among factory hands may at times differ from that elsewhere ideally in use See, e.g., *Nebraska Bag Processing Company*, 122 NLRB 654, 668–669

[51] Stach characterized this as nerve-racking and dangerous to him in view of the high-voltage electrical equipment with which he works. It is a matter of common knowledge that many men do not do their best work under tight surveillance. Indeed, some men are unable or unwilling to work under such conditions Surveillance, although not necessarily illegal, thus may become a burdensome and coercive psychological instrumentality to render an otherwise good job unpalatable and finally intolerable (This is not to say that under certain circumstances intolerable surveillance may not itself be violative of the Act, such as when coercively or discriminatorily intended There is insufficient evidentiary basis for such a finding here.) A degree of "sounding off" by the employee subjected to such treatment may under such circumstances, however, be understandable

[52] That discriminatory withholding of work is violative of Section 8(a)(3) of the Act, see *Decker Truck Lines*, 128 NLRB 858.

[53] Cf *N L R B* v *Elias Brothers Big Boy, Inc.*, 325 F.2d 360, 366 (C A. 6), *N L.R B* v *Tru-Line Metal Products Co* , 324 F.2d 614 (C A. 6), cert denied 377 U.S 906, *N L.R B* v. *Montgomery Ward & Co., Inc* , 242 F 2d 497, 502 (C A 2), cert. denied 355 U.S 829, *E Anthony & Sons, Inc.* v. *N L.R.B* , 163 F 2d 22 (C A D C), cert denied 332 U S 773.

[54] These findings are made notwithstanding the Union's omission in its September 16 letter to Respondent to mention Stach's August 23 transfer.

E. *Alleged Violation of Section 8(a)(4)*

On the first day of the hearing in this case, Respondent's Augusta Boulevard employees James Bastian and Joseph Kozak testified under subpena as General Counsel's witnesses. The hearing adjourned at approximately 4:50 p.m. These two employees work on Respondent's second (night) shift, commencing at 4:30 p.m. Reporting for work between 5:30 and 6 (travel time from the hearing site to the plant is about 45 minutes), they found their timecards removed from the rack. When they sought out Supervisor Kucharski to ascertain the reason, he (who had removed their cards when they did not report on time) told them to go home for the night. A day-shift tester was observed to be working overtime.

This incident resulted in an amendment of the complaint by General Counsel the following morning, without objection by Respondent, so as to allege violation of Section 8(a)(4) of the Act through coercive retaliation by Respondent against the two employees for testifying in this case.

Respondent's explanation for this incident, through its Manufacturing Manager Durand, is that, realizing that a large proportion of his departmental employees would be at this hearing and not knowing what time they would return, in order to avoid production loss he directed that positions be manned overtime if necessary to maintain production. Since the positions of Bastian and Kozak were already manned by overtime personnel when they reported late, and it was not feasible to remove the overtime workers already at work, Bastian and Kozak were for that reason instructed to go home for the night. Respondent undertook to compensate both men in full under the circumstances. There is no contention that this undertaking has been unfulfilled.

Crediting Respondent's explanation, which appears to be reasonable under the circumstances, upon the record presented I do not believe that it has been established that Respondent's action was in retaliation or reprisal against the employees for testifying; on the contrary, not knowing whether or when the two employees would report for work, Respondent merely made reasonable provision through overtime use of day help to avoid interruption of its normal production schedules. There has been no financial or other prejudice to the two employees who testified and reported an hour or more after the beginning of their shift.

I find that it has not been established by substantial credible evidence that Respondent's action in not permitting its employees James Bastian and Joseph Kozak to work on May 4, 1966, was because they gave testimony and engaged in protected activities under the Act.[55]

Upon the foregoing findings and the entire record, I state the following:

CONCLUSIONS OF LAW

1. Motorola, Inc., Respondent herein, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Assertion of jurisdiction herein is proper.

4. On or about September 15, 1965, Respondent through its Supervisor Ronald Caccamo at its Augusta Boulevard, Chicago, plant interrogated its employees Gerhard Kutzora and James Bastian concerning their union membership and unlawful organizational activities, in violation of Section 8(a)(1) of the Act.

5. It has not been established by a fair preponderance of substantial credible evidence that on and since September 1, 1965, Respondent has improperly kept its employees or any of them at its Augusta Boulevard, Chicago, plant under surveillance in violation of Section 8(a)(1) of the Act.

6. In or about September 1965 through its Supervisor Ronald Caccamo, and in or about February 1966 through its Supervisor Victor Kucharski, Respondent unduly broadly and disparately proscribed or attempted to proscribe all communication by its employee Donald Stach with other employees by reason of Stach's union and lawful organizational activities, in violation of Section 8(a)(1) of the Act.

7. It has not been established by a fair preponderance of substantial credible evidence that on or about September 17, 1965, or at any other time in September or October 1965, Respondent granted wage increases to its technical employees, including technicians at its Augusta Boulevard, Chicago, plant, for discriminatory or coercive reasons or otherwise in violation of Section 8(a)(1) of the Act.

8. On August 23, 1965, Respondent demotionally transferred its employee Donald Stach from the position of analyzer to the position of tester at its Augusta Boulevard, Chicago, plant, among other things depriving said Stach of all opportunity for overtime, and Respondent has at all times since then maintained and continues to maintain Stach in said demotionally transferred status without overtime, by reason of his union and lawful organizational activities; such actions and each of them by Respondent being in violation of Section 8(a)(3) and (1) of the Act.

9. It has not been established by a fair preponderance of substantial credible evidence that on or about May 4 Respondent denied employment to its employees James Bastian and Jospeh Kozak (Kuzak) or either or them because said employees gave testimony or engaged in union or other lawful activity under the Act.

10. Each of the violations set forth in paragraphs 4, 6, and 8 hereof, is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent discriminatorily demoted and has maintained in demoted status an employee, I shall

[55] This finding is made notwithstanding the testimony of Bastian and Kozak that Kucharski told them "to go home because there was not enough work for us that night" (Bastian) or "You are not working today There is not enough work Come back tomorrow" (Kozak) Despite the possible poor choice of words by Kucharski (who I noted speaks poor English), in view of the fact that both Bastian and Kozak observed a day-shift employee working overtime, Kucharski's expression is consistent with the possibility of insufficient work for these two employees by reason of the use of replacement overtime personnel who could not very well be released after having started and already being at work

recommend that Respondent be required to offer the employee thus discriminated against immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to make him whole for any loss of earnings (including overtime) he may have suffered by reason thereof, by payment to him of a sum of money equal to that which he normally would have earned as wages (including overtime) from the date of said unlawful discrimination to the date of Respondent's offer to reinstate him, together with interest thereon, less his net earnings if any during such period. I shall further recommend that the three discriminatory and improper incident reports placed into the discriminatorily demoted employee's personnel file subsequent to his discriminatory demotion be removed and expunged from his personnel records.[56] Appropriate provision shall be made in the Recommended Order and posted notice to employees, for notification to the discriminatorily demoted employee if he is now in the Armed Forces of the United States, of his right to full reinstatement to his former position upon application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended. Backpay and interest should be computed in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co., Inc.*, 138 NLRB 716. Respondent should also be required to make available necessary records for computation of backpay (including overtime).

Because of the nature and extent of the unlawful labor practices here found—particularly Respondent's coercive singling out for discriminatory demotion of the introducer and leader of lawful union activity at the plant and its attempted proscription of all communications by him with other employees, and its persistence in maintaining him for over a year in that reduced position for coercive reasons—which appear to be indicative of an attitude of intolerant opposition toward the exercise by employees of rights guaranteed to them by Congress under the Act, I consider it appropriate to recommend that Respondent be required to cease and desist from infringing in any manner upon rights of employees guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following:

RECOMMENDED ORDER

Motorola, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating in violation of the Act any employee as to his union membership or lawful organizational or other activity.

(b) Announcing, promulgating, placing or continuing in effect, or enforcing any rule or requirement proscribing communication between employees, discriminatorily or otherwise for the purpose of preventing, interfering with, or impeding lawful union or organizational activity, or so as to interfere with, coerce, or intimidate employees in the exercise of rights guaranteed under the Act.

(c) Discouraging membership in and lawful activities on behalf of United Automobile, Aerospace and Agricultural Implement Workers, AFL–CIO, or other labor organization of its employees, by demotionally transferring or taking other adverse personnel action against, or by maintaining in such demotional status, any employee, in violation of the Act, or by otherwise discriminating or threatening to discriminate against any employee in regard to hire, tenure, or any term or condition of employment, or for exercise or attempted exercise of any right under the Act.

(d) Interfering in any manner with, restraining, or coercing any employee in the exercise of his right to self-organization; to form, join, or assist any labor organization; to bargain collectively through representatives of his own choosing; to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer to Donald Stach immediate, full reinstatement to his former or substantially equivalent position of analyzer, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay (including overtime), in the manner set forth in "The Remedy" section of this Decision. In the event Stach is presently serving in the Armed Forces of the United States, notify him of his right to such full reinstatement upon application after discharge from the Armed Forces, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended.

(b) Remove and expunge from the personnel records of Donald Stach the incident reports referred to in this Decision, dated on or about October 20, 1965, and February 2 and March 21, 1966.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, overtime records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay (including overtime) due under the terms of this Decision.

(d) Post in its factory at Augusta Boulevard, Chicago, Illinois, copies of the attached notice marked "Appendix."[57] Copies of said notice, to be furnished by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[56] Cf *Graber Manufacturing Company, Inc*, 158 NLRB 244, enfd 382 F 2d 990 (C A 7)

[57] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

(e) Notify said Regional Director, in writing, within 20 days from receipt of this Decision and Recommended Order, what steps have been taken to comply therewith.[58]

I FURTHER RECOMMEND that the complaint be and it is hereby dismissed as to all alleged violations not herein found.

[58] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL offer reinstatement to Donald Stach to his former position as analyzer (or substantially equivalent position), without prejudice to his seniority or other rights and privileges, with compensation plus interest for any overtime or other pay lost by him as a result of our action in discriminatorily demotionally transferring him to the position of tester on August 23, 1965, and since then maintaining him in that position. We will also remove and expunge from Donald Stach's personnel records the incident reports against him dated October 20, 1965, and February 2 and March 21, 1966.

WE WILL NOT interrogate any employee in violation of the Act regarding his or any other employee's union membership, activities, or other lawful actions or attempted actions under the Act.

WE HEREBY RESCIND and will not again announce, promulgate, place or continue in effect, or enforce, any rule or requirement unlawfully or discriminatorily forbidding employees to communicate with each other regarding union or organizational activities at proper time and in proper ways.

WE WILL NOT discourage membership in and lawful activities on behalf of United Autombile, Aerospace and Agricultural Implement Workers, AFL–CIO, or other labor organizations of our employees, by coercively or otherwise unlawfully interrogating employees as to their or other employees' union membership or activities; or by announcing, promulgating, placing or continuing in effect, or enforcing any rule or requirement unlawfully or discriminatorily forbidding employees to discuss union or organizational matters with each other; or by discriminatorily demoting, transferring, or maintaining in demotional status, or by taking or threatening to take other adverse personnel action against any employee because of union membership or activity or exercise or attempted exercise of any right under the Act.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed to them by Congress, to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain from engaging in any or all such activities, except to the extent that such rights may be affected by a union-shop agreement as authorized in the State of Illinois by virtue of Section 8(a)(3) of the Act as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All employees are free to join or refrain from joining any Union.

MOTOROLA, INC.
(Employer)

Dated By
(Representative) (Title)

Note: We will notify the above employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 353–7597.

Local 513, International Union of Operating Engineers, AFL–CIO (Zeni-McKinney-Williams Corporation) *and* Kiewit-Centennial Cominco American, Incorporated, Local 318, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (Zeni-McKinney-Williams Corporation) Local 562, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (Zeni-McKinney-Williams Corporation) *and* Cominco American Incorporated. Cases 14–CC–371, 14–CC–375, 14–CC–380, and 14–CC–381.

March 15, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND JENKINS

On September 7, 1966, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled case, finding that the Respondents had engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take